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9 Attorneys for Defendant FISERV, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

14 Dr. LAKSHMI ARUNACHALAM,
15 Plaintiff,
16 v.
17
18 APPLE, INC., et al.,
Defendants.

Case No. 18-CV-1250-EJD

**DEFENDANT FISERV'S OPPOSITION TO
PLAINTIFF'S MOTIONS REGARDING
CONTRACT RIGHTS AND *FLETCHER V.
PECK***

1 Defendant Fiserv, Inc. (“Fiserv”) respectfully opposes Plaintiff’s series of motions
 2 requesting rulings on whether contract rights (Dkt. No. 32) and *Fletcher v. Peck* (Dkt. No. 56)
 3 apply to patents. The motions should be denied for numerous reasons.

4 First, Plaintiff’s motions are largely unintelligible and appear to seek advisory opinions
 5 about an abstract legal matter—whether patents are subject to being invalidated. But federal
 6 courts do not provide advisory opinions. The Court should deny Plaintiff’s motions on that
 7 basis. *See generally Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) (federal courts have no
 8 jurisdiction to issue advisory opinions).

9 Second, to the extent Plaintiff believes it was improper for courts or the PTO to
 10 invalidate her patents, those issues should have been raised in connection with those
 11 proceedings—not in a separate, affirmative lawsuit. Plaintiff has litigated patent infringement
 12 suits against many of the current Defendants and/or their customers and had the full opportunity
 13 to appeal any adverse rulings, whether from district court or PTAB rulings. She has, indeed, lost
 14 appeals to the Federal Circuit and requests for *certiorari* to the U.S. Supreme Court.

15 Third, to the extent the Court considers Plaintiff’s arguments, it should reject them.
 16 Patent law, governed by the Patent Act (35 U.S.C. § 101 *et seq.*), is not the same as contract law.
 17 Plaintiff offers no persuasive reasons to suggest otherwise. The Patent Act, in turn, provides for
 18 multiple methods of challenging a patent’s validity in court and at the PTO. *See, e.g.*, 35 U.S.C.
 19 §§ 102, 103, 282, 311. Moreover, the case of *Fletcher v. Peck*, 10 U.S. 87 (1810) does not
 20 concern patents and does not hold that patents cannot be invalidated. To the extent Plaintiff
 21 argues otherwise, she is ignoring longstanding precedent and practice. *See Constant v.*
 22 *Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1563-64 (Fed. Cir. 1988) (rejecting constitutional
 23 challenge to federal courts’ ability to adjudicate patents as “obviously erroneous”; noting that
 24 “[s]ince the adoption of the first Patent Act in 1790, Congress has permitted judicial review of
 25 the validity of patents” and that “[t]he courts...have consistently construed the Patent and
 26 Copyright Clause to permit judicial review of patents”); *Andrews v. Hovey*, 124 U.S. 694, 717-
 27 18 (1888) (denying rehearing after ruling that public uses by others after having observed the
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1 inventor's invention and before the critical date, even though done without the inventor's
2 consent, invalidated the inventor's patent on grounds of public use).

3 For the foregoing reasons, Fiserv respectfully requests that the Court deny Plaintiff's
4 outstanding motions.

5 DATED: April 2, 2018

PERKINS COIE LLP

7 By: /s/ Ramsey M. Al-Salam

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2 **CERTIFICATE OF SERVICE**
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7 I hereby certify that on April 2, 2018, I electronically filed the foregoing document with
8 the Clerk of the Court using the CM/ECF system, which will send notification of such filing to
9 the plaintiff and all counsel of record for the parties.
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7 */s/ Ramsey M. Al-Salam* _____
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